

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AFFYMETRIX, INC., a Delaware corporation,

Plaintiff/Counter-Defendant,

v.

ILLUMINA, INC., a Delaware corporation,

Defendant/Counter-Plaintiff.

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Civil Action No.: 04-901 JJF

ILLUMINA, INC.'S PROPOSED VERDICT FORM

Illumina, Inc. submits the attached Proposed Verdict Form, in triplicate and on disc in WordPerfect format.

/s/ Richard K. Herrmann

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PATENT ISSUES

U.S. PATENT NO. 5,795,716 (“THE ‘716 PATENT”)

1. Has Affymetrix proven by a preponderance of the evidence that Illumina has literally infringed any of the following claims of the ‘716 patent?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 5 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 9 Yes _____ (for Affymetrix) No _____ (for Illumina)

2. Has Affymetrix proven by a preponderance of the evidence that Illumina has infringed any of the following claims of the ‘716 patent under the doctrine of equivalents?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 5 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 9 Yes _____ (for Affymetrix) No _____ (for Illumina)

3. Has Affymetrix proven by a preponderance of the evidence that Illumina has contributorily infringed any of the following claims of the ‘716 patent?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 5 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 9 Yes _____ (for Affymetrix) No _____ (for Illumina)

4. Has Affymetrix proven by a preponderance of the evidence that Illumina has induced infringement of any of the following claims of the ‘716 patent?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 5 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 9 Yes _____ (for Affymetrix) No _____ (for Illumina)

5. If you found that Illumina infringes any claim of the ‘716 patent, state separately for each claim the specific Illumina products and services you find to infringe:

U.S. PATENT NO. 6,355,432 (“THE ‘432 PATENT”)

6. Has Affymetrix proven by a preponderance of the evidence that Illumina has literally infringed any of the following claims of the ‘432 patent?

Claim 2 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 9 Yes _____ (for Affymetrix) No _____ (for Illumina)

7. If you found that Illumina infringes any claim of the ‘432 patent, state separately for each claim the specific Illumina products and services you find to infringe:

U.S. PATENT NO. 6,646,243 (“THE ‘243 PATENT”)

8. Has Affymetrix proven by a preponderance of the evidence that Illumina has literally infringed any of the following claims of the ‘243 patent?

Claim 14 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 15 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 35 Yes _____ (for Affymetrix) No _____ (for Illumina)

9. Has Affymetrix proven by a preponderance of the evidence that Illumina has contributorily infringed any of the following claims of the ‘243 patent?

Claim 35 Yes _____ (for Affymetrix) No _____ (for Illumina)

10. Has Affymetrix proven by a preponderance of the evidence that Illumina has induced infringement of any of the following claims of the ‘243 patent?

Claim 35 Yes _____ (for Affymetrix) No _____ (for Illumina)

11. If you found that Illumina infringes any claim of the ‘243 patent, state separately for each claim the specific Illumina products and services you find to infringe:

U.S. PATENT NO. 6,399,365 (“THE ‘365 PATENT”)

12. Has Affymetrix proven by a preponderance of the evidence that Illumina has literally infringed any of the following claims of the ‘365 patent?

Claim 36 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 41 Yes _____ (for Affymetrix) No _____ (for Illumina)

13. Has Affymetrix proven by a preponderance of the evidence that Illumina has contributorily infringed any of the following claims of the ‘365 patent?

Claim 41 Yes _____ (for Affymetrix) No _____ (for Illumina)

14. Has Affymetrix proven by a preponderance of the evidence that Illumina has induced infringement of any of the following claims of the ‘365 patent?

Claim 41 Yes _____ (for Affymetrix) No _____ (for Illumina)

15. If you found that Illumina infringes any claim of the ‘365 patent, state separately for each claim the specific Illumina products and services you find to infringe:

U.S. PATENT NO. 5,545,531 (“THE ‘531 PATENT”)

16. Has Affymetrix proven by a preponderance of the evidence that Illumina has literally infringed any of the following claims of the ‘531 patent?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 2 Yes _____ (for Affymetrix) No _____ (for Illumina)

17. Has Affymetrix proven by a preponderance of the evidence that Illumina has contributorily infringed any of the following claims of the ‘531 patent?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 2 Yes _____ (for Affymetrix) No _____ (for Illumina)

18. Has Affymetrix proven by a preponderance of the evidence that Illumina has induced infringement of any of the following claims of the ‘531 patent?

Claim 1 Yes _____ (for Affymetrix) No _____ (for Illumina)

Claim 2 Yes _____ (for Affymetrix) No _____ (for Illumina)

19. If you found that Illumina infringes any claim of the ‘531 patent, state separately for each claim the specific Illumina products and services you find to infringe:

DAMAGES

20. If you have found that Illumina has infringed at least one claim from any of the asserted patents, has Affymetrix proven by a preponderance of the evidence that it is entitled to lost profits damages, and if so, for which Illumina products and services is Affymetrix entitled to lost profit damages?

Yes _____ (for Affymetrix) No _____ (for Illumina)

Illumina products/services: _____

21. If you answered "Yes" to the above question, what amount of lost profits has Affymetrix proven by a preponderance of the evidence that it is entitled to?

Amount \$ _____

22. For each infringing Illumina product/service that Affymetrix has not sought lost profits damages for or for which you conclude that Affymetrix is not entitled to lost profits damages, specify the reasonable royalty rate and total infringing sales volume that Affymetrix has proven by a preponderance of the evidence that it is entitled to?

Illumina product/service: _____

Royalty rate: _____%

Infringing sales volume: \$ _____

Illumina product/service: _____

Royalty rate: _____%

Infringing sales volume: \$ _____

Illumina product/service: _____

Royalty rate: _____%

Infringing sales volume: \$ _____

You must each sign this Verdict Form:

Dated: _____

_____(foreperson)
